

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to photography and retouching services and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 16, “Taxable Sales,” and Chapter 26, “Sales and Use Tax on Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.2.

Purpose and Summary

Item 1 removes photography and retouching services from the category of services treated as tangible personal property, pursuant to 2018 Iowa Acts, Senate File 2417, section 169, by amending rule 701—16.51(422,423). Item 1 also removes some duplicative language relating to vulcanization and includes other organizational, nonsubstantive edits.

Item 2 rescinds outdated rule 701—16.52(422,423), the content of which was previously updated and adopted as rule 701—214.2(423).

Item 3 adopts rule 701—26.17(423), whose language is substantially similar to that in current rule 701—16.51(422,423) but includes photography and retouching services, which were added to the list of taxable enumerated services by 2018 Iowa Acts, Senate File 2417, section 170. Also, the definitions of “photography” and “retouching” in rule 701—26.17(423), unlike those in current rule 701—16.51(422,423), reflect that photography and retouching services are no longer tied to the production of tangible personal property and that the definitions include digital photography and digital retouching. Finally, the new rule provides examples of general taxable photography and retouching services.

Fiscal Impact

This rule making has no fiscal impact beyond the impact estimated by the Legislative Services Agency for 2018 Iowa Acts, Senate File 2417.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 19, 2019. Comments should be directed to:

Joe Fraioli
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Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.4057
Email: joe.fraioli@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 701—16.51(423) as follows:

701—16.51(422,423) Sales of services treated as sales of tangible personal property.

16.51(1) *Generally.* ~~Effective July 1, 1984, For purposes of the imposition of Iowa sales and use tax, the sale of the following services are treated as the sale of tangible personal property: engraving, photography, retouching, printing, and binding services is no longer the sale of enumerated services but the sale of tangible personal property, vulcanizing, recapping, and retreading. For the purposes of this subrule these services will be referred to as “property.”~~

~~a. 16.51(2) *Definitions and characterizations.*~~

~~(1) “Binding.” Persons engaged in the business of binding any printed matter, other than for the purpose of ultimate sale at retail, are engaged in the sale of property, the gross receipts of which are subject to tax.~~

~~(2) “Engraving” includes the business of engraving on wood, metal, stone, or any other material.~~

~~(3) “Photography” is the art or process of producing images or objects upon a photosensitive surface by the chemical action of light or other radiant energy.~~

~~(4) “Printing” includes, but is not limited to, any type of printing, lithographing, mimeographing, photocopying and similar reproduction. The following activities are nonexclusive examples of property which are subject to tax: printing of pamphlets, leaflets, stationery, envelopes, folders, bond and stock certificates, abstracts, law briefs, business cards, matchbook covers, campaign posters and banners for the users thereof.~~

~~“Vulcanizing” means the act or process of treating crude rubber, synthetic rubber, or other rubberlike material with a chemical and subjecting it to heat in order to increase its strength and elasticity.~~

~~(5) “Retouching” includes the renovation or retouching of an existing likeness or design.~~

~~b. Reserved.~~

~~**16.51(2)** Effective May 18, 1984, the sale of vulcanizing, recapping and retreading services is no longer the sale of enumerated services, but is the sale of tangible personal property. For the purposes of this subrule these services will also be referred to as “property.”~~

~~a. “Vulcanizing” means the act or process of treating crude rubber, synthetic rubber, or other rubber-like material with a chemical and subjecting it to heat in order to increase its strength and elasticity.~~

b.—The effective date of the statute mandating change in the treatment of vulcanizing, recapping and retreading is May 18, 1984. However, the change in the treatment of this property is retroactive to January 1, 1979. The statute provides that no tax may be assessed for a retailer's treatment of the sale of this property as the sale of tangible personal property between the dates January 1, 1979, and May 17, 1984, inclusive. However, no refund may be claimed on any tax collected prior to May 18, 1984, if the basis for the refund claim is the argument that the sale of vulcanizing, recapping and retreading services is the sale of tangible personal property.

16.51(3) *Prepaid calling cards and wireless calling services.* Effective July 1, 1997, sales ~~Sales~~ of prepaid telephone calling cards and prepaid authorization numbers which furnish the holder with communication service are taxable as sales of tangible personal property. See rule ~~16.52(422,423)~~ below 701—214.2(423) for an explanation of the sales tax treatment of other types of prepaid merchandise cards.

This rule is intended to implement Iowa Code sections ~~422.43 and 423.1~~ 423.2(1)“a”(1) to 423.2(1)“a”(3).

ITEM 2. Rescind rule **701—16.52(422,423).**

ITEM 3. Rescind rule 701—26.17(422) and adopt the following **new** rule in lieu thereof:

701—26.17(423) Photography and retouching.

26.17(1) *Definitions.*

“Photography” means the art or process of capturing or producing still or moving images, films, or videos using any device designed to record or capture images, film, or video. Taxable sales associated with photography services include but are not limited to sitting or photoshoot fees and fees relating to taking or producing photographs or videos, including editing.

“Retouching” means the alteration, restoration, or renovation of a picture, film, video, image, artwork, likeness, or design.

26.17(2) *Taxation generally.* Beginning July 1, 2018, the sales price of photography services and retouching services are taxable regardless of whether the service results in the production of tangible personal property or specified digital products.

EXAMPLE 1: Standalone photography service. X operates a photography business where customers can purchase a half-hour photoshoot session for \$50 and may purchase physical or electronic copies of any photographs taken during the photoshoot for \$10 each. Y purchases a half-hour photoshoot from X for \$50; however, after viewing the images, Y decides not to purchase any copies of any of the photographs. X must collect and remit sales tax and any applicable local option tax on \$50, the cost of the photography service, even though Y decided not to purchase any of the resulting photographs.

EXAMPLE 2: Photography service and sale of photographs. Same facts as Example 1, except that Y decides to purchase ten photographs for \$10 each. X must collect and remit sales tax and any applicable local option tax on \$150, the total cost of the \$50 photography service and the \$100 cost of the ten photographs. Here, the photography service is taxable and the photographs are taxable as the sale of tangible personal property if they are delivered in hard copy or as the sale of specified digital products if they are delivered electronically.

This rule is intended to implement Iowa Code sections 423.2(6)“*bo*” and 423.2(6)“*bp*.”